

CONFIDENTIAL  
INVESTIGATIVE  
REPORT

Prepared by:

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## I. Introduction and Investigation Background

On May 24, 2016, the UC Santa Cruz Title IX office initiated an investigation of numerous complaints of sexual harassment by an employee ("Employee 1") at the College [REDACTED] Dining Hall. During the course of that investigation multiple witnesses told Principal Investigator/Complaint Resolution Officer ("PI/CRO") Linda Imonode Skemer that they had reported inappropriate conduct by Employee 1 to their supervisor, [REDACTED]. Mr. [REDACTED] participated as witness in that investigation and PI/CRO Imonode Skemer interviewed him on November 30, 2015 and again on June 1, 2016. Mr. [REDACTED] was a responsive and cooperative witness. The statements he gave to PI/CRO Imonode Skemer corroborated the statements of witnesses who had reported the allegations of inappropriate conduct to him as their supervisor.

Due to the number of unreported complaints and allegations that emerged during the investigation of Employee 1's case, an alternative resolution was not appropriate so Title IX Officer Tracey Tsugawa decided to initiate a separate investigation of Mr. [REDACTED] pursuant to her authority under Section (V)(A)(4)(b) of the *UC Policy on Sexual Violence and Sexual Harassment*.<sup>1</sup>

On September 23, 2016, PI/CRO Isabel Dees delivered an investigation notification letter to Mr. [REDACTED] via e-mail. Subsequently, PI/CRO Dees interviewed Mr. [REDACTED] on September 27, 2016. Mr. [REDACTED] conceded at that time, he did not report the complaints and allegations of the five female employees he received either to his supervisor or to the Title IX Officer.

No additional witnesses were interviewed.

After reviewing the evidence, this investigation concludes that there is a preponderance of evidence to support a finding that Mr. [REDACTED] conduct constituted failure to report by a responsible employee and that he has therefore violated the *UC Santa Cruz Policy on Sexual Harassment* (February 2012; December 2012; March 2014; October 2014) and the *UC Policy on Sexual Harassment and Sexual Violence* (February 25, 2014; June 17, 2015). The reasons for this determination are explained below.

## II. Summary of Events

### A. Background

[REDACTED] is currently a Senior Food Service Manager at [REDACTED] Dining Hall and has been employed with dining services at UC Santa Cruz since 2008. Mr. [REDACTED] was assigned to work as Senior Food Service Manager at different dining hall locations throughout the approximate 9 years of his employment, including the College [REDACTED] Dining Hall. During the course of PI/CRO Imonode Skemer's Title IX investigation of allegations of sexual

<sup>1</sup> The allegations of Mr. [REDACTED]'s failure to report to the Title IX Officer occurred prior to January 1, 2016 and are therefore subject to the *reporting requirements* under the policies in effect *prior* to the January 1, 2016 *UC Policy on Sexual Violence and Sexual Harassment*; see below for the reporting requirements as articulated in older UC and UC Santa Cruz policies. However, because this investigation was initiated *after* January 1, 2016, the investigation *procedures* are governed by the January 1, 2016 UC policy and UC Santa Cruz procedures (February 2016).

harassment against Employee 1, Mr. █ Employee 1's supervisor, participated as witness in the investigation.

During his interview with PI/CRO Imonode Skemer, Mr. █ stated the following:<sup>2</sup>

Mr. █ could recall at least five instances when female employees reported concerns about [Employee 1]; he addressed most of these complaints directly with [Employee 1]. He did not remember the specific timing of the reports and performance management meetings, but summarized the instances as follows:

- **[Complainant 1]:** Several years ago [Complainant 1] once reported to Mr. █ that she was concerned about the way [Employee 1] was speaking to her. [Complainant 1] did not tell [Employee 1] directly that she did not like to hear the jokes; instead she asked Mr. █ to talk to [Employee 1] and tell him to stop. When Mr. █ spoke to [Employee 1] about [Complainant 1's] concerns, [Employee 1] said, "I was just making a joke." Mr. █ told [Employee 1] that the jokes were not okay, to which [Employee 1] said, "Yes, I did say that. I will make sure it doesn't happen again." When Mr. █ followed up with [Complainant 1], she told him that [Employee 1] had apologized.<sup>3</sup>
- **[Complainant 2]:** [Complainant 2] once went to Mr. █ to complain about [Employee 1's] behavior, but she also told Mr. █ that she "didn't want to make a big deal, but wanted [him] to understand that it was not okay."<sup>4</sup>
- **[Complainant 3]:** Several years ago [Complainant 3] went to Mr. █ to report an incident when [Employee 1] said something in a "playful, joking" manner but for which she asked Mr. █ to talk with [Employee 1]; Mr. █ stated that the situation seemed to have resolved itself before he could discuss it with [Employee 1]. When Mr. █ checked in with [Complainant 3] later, she said [Employee 1] had apologized.<sup>5</sup>
- **[Complainant 4]:** In the fall of 2015, [Complainant 4] reported to Mr. █ that she saw [Employee 1] staring at a student in a sexual manner and making a gesture about the student's butt. [Complainant 4] told Mr. █ that she had told [Employee 1] to stop that behavior.<sup>6</sup>

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<sup>2</sup> This text without the footnotes is excerpted verbatim from the report of the investigation conducted by PI/CRO Imonode Skemer.

<sup>3</sup> Complainant 1 was interviewed by PI/CRO Imonode Skemer on May 26, 2016. Mr. █'s statement corroborated Complainant 1's statement to PI/CRO Imonode Skemer about the allegations and the fact that she reported her concerns to Mr. █.

<sup>4</sup> PI/CRO Imonode Skemer did not ask Mr. █ for more details about Complainant 2's allegations, and Complainant 2 did not respond to requests for an interview.

<sup>5</sup> Complainant 3 was interviewed by PI/CRO Imonode Skemer on May 26, 2016. Mr. █'s statement contradicted Complainant 3's statement to PI/CRO Imonode Skemer that she (Complainant 3) had never had a problem with Employee 1.

<sup>6</sup> Complainant 4 was interviewed by PI/CRO Imonode Skemer on November 13, 2015 & May 25, 2016. Mr. █'s statement corroborated Complainant 4's statement to PI/CRO Imonode Skemer about the allegations and the fact that she reported her concerns to Mr. █.

- **[Complainant 5]:** Mr. █ reported that [Complainant 5] came to him upset because [Employee 1] had “said something about a bicycle” and “made some comments with double meaning.”<sup>7</sup>

Mr. █ general practice has been to address these situations “in house” and to have parties “talk it out.” In all cases Mr. █ said that the employees making the reports did not want to “make anything big about it” so Mr. █ handled it in house.

Mr. █ generally finds [Employee 1] to be professional and polite. Mr. █ has not had to speak to [Employee 1] more than once about each party. However, the number of complaints has made Mr. █ concerned that despite coaching, [Employee 1] appears to not “pay attention to what he is doing” and that “something is not clicking.”

## B. Allegations and Evidence

***Allegation: █ failed to comply with the policy when he failed to report numerous instances of prohibited conduct to the Title IX Officer that he received during the course of his employment as a food services supervisor.***

█: When Mr. █ met with PI/CRO Dees he asserted that the statement he provided as a witness in the previous Title IX investigation to PI/CRO Imonode Skemer was true and accurate. Mr. █ acknowledged that he did not make any reports to the Title IX office after receiving any of the complaints from his staff.<sup>8</sup> He further asserted that while it is his custom to discuss all concerns and complaints shared with him by his staff with his supervisor, he had no record of having done so, nor could he recall who his supervisor was at the time each of the reports was made to him.

Mr. █ explained that he understood it was his responsibility to report sexual harassment in the workplace; however, because he believed at the time that the reports of the five employees constituted “horseplay” and not sexual harassment, he did not report the complaints to the Title IX Officer. In addition, each of the five reports he received identified what he believed to be an isolated problematic interaction between an individual complainant and Employee 1. Because Mr. █ received the five reports over the span of his entire employment between 2008 and 2015 and the reports were made approximately 1 to 2 years apart, a pattern of problematic behavior by Employee 1 was not evident to him at the time of each report. Mr. █ further stated that it was not until PI/CRO Imonode Skemer asked about each report collectively during his witness interview that he recognized the reports constituted more than individual incidents of horseplay.

Mr. █ felt he had not had sufficient training to have responded as required by policy prior to sitting through presentations by Tracey Tsugawa, Title IX Officer, to dining hall staff and dining hall managers during the summer of 2016. Mr. █ felt that he was now clear on his responsibility to report all allegations of sexual misconduct to the Title IX office, even incidents that may appear to be singular and isolated.

<sup>7</sup> Complainant 5 was interviewed by PI/CRO Imonode Skemer on November 13, 2015 & May 26, 2016. Mr. █'s statement corroborated Complainant 5's statement to PI/CRO Imonode Skemer about the allegations and the fact that she reported her concerns to Mr. █.

<sup>8</sup> In addition, the Title IX office has no record of ever having received any reports from Mr. █.

### III. Analysis and Conclusion

#### A. UC Santa Cruz Policy and UC Policy

As stated above in Footnote 1, because the allegations of Mr. █'s failure to report to the Title IX Officer occurred *prior* to January 1, 2016, his conduct is therefore subject to the *reporting requirements* under the policies in effect *prior* to the January 1, 2016 *UC Policy on Sexual Violence and Sexual Harassment*. However, because this investigation was initiated *after* January 1, 2016, the *investigation procedures* are governed by the January 1, 2016 UC policy and *UC Santa Cruz Procedures for Reporting and Responding to Reports of Sexual Violence and Sexual Harassment*. Under all the applicable policies, the Title IX Office shall investigate the circumstances of an alleged offense to the extent necessary to make a determination as to whether the allegations contained in a complaint constitute a violation of UC Santa Cruz or UC policy.

An investigation carried out by the Title IX Office is not a legal proceeding but is an investigation to determine whether University policy has been violated. The findings in this investigative report do not reach questions of law as to whether the alleged misconduct supports a violation of applicable laws, but instead address whether applicable policies have been violated.

Once an investigation is complete, the *UC Santa Cruz Procedures for Reporting and Responding to Reports of Sexual Violence and Sexual Harassment* require the Title IX Officer or her/his designee to prepare a written report. The report must contain a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact based on a preponderance of evidence standard, and an analysis of whether a violation has occurred. Furthermore, if the complainant and/or respondent offered witnesses or other evidence that was not considered by the investigator, the investigation report must include an explanation of why it was not considered. Finally, the report will make a determination that, given the totality of the circumstances, either:

- 1) there is *not* a preponderance of evidence to support a finding that the respondent's conduct constituted a violation of the applicable policies; or,
- 2) there *is* a preponderance of evidence to support a finding that the respondent's conduct constituted a violation of the applicable policies.

In this case, the allegations are of the respondent's failure to report incidents of inappropriate conduct to the Title IX Officer as required by UC and UC Santa Cruz policies. The policies in effect prior to January 1, 2016 – the *UC Santa Cruz Policy on Sexual Harassment* (February 2012; December 2012; March 2014; October 2014) and the *UC Policy on Sexual Harassment and Sexual Violence* (February 25, 2014; June 17, 2015) – all state virtually the same reporting requirements and consequences for failing to report:

Supervisors, managers, and other designated employees are responsible for promptly forwarding such reports [of conduct that may constitute sexual harassment] to the Title IX Officer (Sexual Harassment Officer) or other local official designated to review and investigate sexual harassment and sexual violence complaints. Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment or sexual

violence who knew about the incident and took no action to stop it or failed to report the prohibited act may be subject to disciplinary action.<sup>9</sup>

Prior to the February 25, 2014 UC policy and March 2014 UC Santa Cruz policy, the policies were silent on the issue of confidential resources. Subsequently, in accordance with the February 25, 2014 UC policy, the March 2014 UC Santa Cruz policy identified confidential resources and provided those resources with exemptions to the reporting requirements; at the time, UC Santa Cruz defined its confidential resources as on and off-campus victim advocates, professional counselors, and campus conflict resolution services.

### ***B. Findings of Fact***

In order to determine whether a violation of the applicable policies has occurred, this investigation must determine whether 1) Mr. █ is an employee subject to reporting requirements, 2) who received a report of prohibited conduct from any person affiliated with the University during the course his employment, and 3) whether he notified the Title IX Officer of the report.

#### **Employee subject to reporting requirements:**

Mr. █ is a Senior Food Service Manager for Dining Services and was so at the time he received complaints from five different female dining hall employees. A Senior Food Service Manager is not a position designated as a confidential resource by the university. As a Senior Food Service Manager, Mr. █ has supervisorial responsibilities and he was indeed the supervisor for each of the five women who reported complaints of misconduct to him as well as the supervisor for Employee 1 against whom the complaints were made. Because Mr. █ is a supervisor, and not designated a confidential resource, at the time of the complaints reported by the five female employees, he was subject to the reporting requirements articulated in the applicable UC and UC Santa Cruz policies.

#### **Received Report of Prohibited Conduct:**

When Mr. █ spoke to PI/CRO Imonode Skemer, he recalled having received complaints about Employee 1 from at least five female employees. As Mr. █ received complaints by virtue of his status as supervisor of each complainant, and the complaints were related to employment, Mr. █ received reports from university employees during the course of his employment. The nature of the complaints he received included sexual innuendo, lewd conduct, and other behaviors of a sexual nature and as such, constituted reports of prohibited conduct he was obliged by policy to report to the Title IX Officer.

#### **Notice to Title IX Officer**

As a supervisor, Mr. █ was obliged to report the complaints he received from each of the women he supervised. Mr. █ acknowledged he gave no notice to the Title IX Officer. Further, the Title IX office has no record of having ever received any reports from Mr. █. Thus, Mr. █ failed to provide the Title IX Officer with notice of prohibited conduct.

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<sup>9</sup> This is text from the June 17, 2015 *Interim UC Policy on Sexual Harassment and Sexual Violence*.

### ***C. Analysis and Conclusion***

Because Mr. █ is a supervisor who received multiple reports of prohibited conduct during the course of his employment and gave no notice to the Title IX Officer, he failed to comply with his responsibility under the applicable UC and UC Santa Cruz policies. As such, this investigation concludes that there is a preponderance of evidence to support the finding that Mr. █ violated the *UC Santa Cruz Policy on Sexual Harassment (February 2012, December 2012, March 2014, October 2014)* and the *UC Policy on Sexual Harassment and Sexual Violence (February 25, 2014; June 17, 2015)*.